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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re C.A. et al., Persons Coming Under
the Juvenile Court Law.

SAN MATEO COUNTY HUMAN
SERVICES AGENCY,

Plaintiff and Respondent,

v.

S.A.,

Defendant and Appellant.

A155374

(San Mateo County
Super. Ct. Nos. 18JD0547, 18JD0740)

S.A. (Mother) appeals from jurisdictional and dispositional orders declaring her son C.A. and her daughter V.A. dependents of the court pursuant to Welfare and Institutions Code section 300, subdivision (b)(1).¹ Mother contends the evidence was insufficient to support jurisdictional findings that the minors were at risk of serious harm as a result of her mental health issues. We affirm.

BACKGROUND

In June 2018, the San Mateo County Human Services Agency (Agency) filed a section 300 petition as to C.A. (V.A. had not yet been born) alleging he was at substantial risk of physical harm after Mother had been placed on a section 5150 psychiatric hold for

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

“expressing suicidal ideation” and at substantial risk of suffering or had suffered serious emotional harm due to Mother’s history of “impulsive, erratic, and aggressive behaviors.”

In its detention report, the Agency detailed Mother’s long history with child protective services, which included 19 prior referrals in Santa Barbara, San Mateo, and Ventura counties. Mother had an older child, F.A., who had been removed and was being raised by the maternal grandparents. At the time the Agency prepared the report, Mother was seven months pregnant and had told “several people (nurses, police, hospital social workers and the father,) that she hate[d] this baby,” had hit herself in the stomach hard enough to leave bruises, and had “threatened to throw herself down the stairs of the maternity clinic to kill the baby and herself.”

Mother was placed on a section 5150 hold, and the following day, the Agency social worker met with a hospital social worker. The hospital social worker stated the facility had a prior history with Mother, which included a prior section 5150 hold, about a month earlier, because of her threat to “get rid of [her] baby.”

Mother told the Agency she had “worked at a strip club, [as] an escort and later performed in pornographic films” (and hospital staff suspected Mother was still in the escort business). She met Father in the parking lot of a strip club, and the two began a relationship after he “propositioned her to have relations with him.” On the morning of the incident leading to her second section 5150 hold, she had been upset that Father was leaving to go to work and attempted to stop him. The two were in a “tug-of-war” over the door, which she may have “bumped” with her stomach and led to the bruising. While she maintained Father had never hit or pushed her, she acknowledged she had hit him, “mostly in the beginning of their relationship” and after she had found child pornography on his phone. Mother described C.A. as “the love of her life.” However, she claimed her current pregnancy was the result of Father having raped her, and she felt “detached from it and does not want the baby.” She denied she was “ever a danger to herself,” and claimed Father was a pedophile.

Father, in turn, stated Mother had recently proposed “to ‘be engaged’ again,” and after he declined, she threw the ring in the dirt. The next day, Mother reported to the

police he had stolen the ring. He was not aware of the bruises on Mother's stomach, although he admitted he had seen Mother "punch her stomach leaving bruises" while pregnant. Father and his mother (the paternal grandmother) had a restraining order against Mother, which Father stated "forbids [her] from harassing him and his mother, and states they can have 'friendly contact' with each other if they are peaceful." He described Mother as "emotionally volatile," and stated she was both physically and verbally abusive to him. He admitted to having pornography on his phone, but claimed it involved adult women.

Father recalled two incidents in which Mother "became irate and endangered [C.A.]" In the first incident, Mother "slammed [one-month-old C.A.] while in his carrier very hard into the car, jerking the baby's head." In the second, while Father was visiting with C.A., Mother yelled at him and "ended the visit." Father left quickly, fearing Mother would try to key his car. Mother "then pushed the baby in the stroller running, passing [] Father, 'at top speed' through the parking lot." She then "kicked his car leaving several dents," and he felt as if she was not watching out for passing cars in the parking lot. She later "called the police and stated Father had hit her." Despite these incidents, Father felt Mother was "attentive" to C.A. and stated the minor was "well fed and usually ha[d] clean clothes."

Father had maintained a relationship with C.A. for the child's first three months, until Mother moved to southern California, and then he "stayed involved with the child through FaceTime calls and photos." He hoped to be able to co-parent with Mother, but if that was not an option, he stated he would like custody of C.A.

Concluding Mother had a "history of emotional instability and erratic behaviors," which put C.A. at "risk of neglect and emotional abuse," the Agency recommended C.A. remain in Father's care and custody and that Mother be allowed supervised visits pending further investigation into Mother's mental health needs.

The court adopted the recommended findings and orders.

In an addendum report, the Agency reported Father was "concerned about [M]other's mental health and because of that, her ability to parent." The Agency also

spoke again with the hospital social worker, who explained Mother had a “long psychiatric history with several hospitalizations.” The social worker had spoken with Mother, who stated Father had not raped her but instead “paid for sex with her, which resulted in her current pregnancy.” Mother told the social worker she had been sleeping in a car. The social worker also recounted a number of instances of Mother verbalizing her wish to self-harm, terminate her pregnancy, and even give up C.A.: (1) January 2017, Mother told staff “she wanted to, ‘hang herself’ ”; (2) April 2017, Mother told staff she “ ‘wanted [to] hurt herself’ ”; (3) May 2017, Mother told staff she wanted to “ ‘give [C.A.] up for adoption’ ”; (4) July 2017, Mother told staff she wanted to “ ‘shoot herself’ ”; (5) during outpatient services she “denied being suicidal but stated, ‘it’s always at the back of my mind’ ”; (6) May 2018, Mother told staff “she wanted to throw herself down the stairs of the Gyn OBGYN Clinic’s stairs to kill the baby and herself.” The social worker reported “the social work team at Stanford Medical Center, ‘feels strongly that [C.A.] is not safe with the mother.’ ”

The Agency also spoke with Mother’s psychiatrist, who had only seen Mother twice and had not done “a normal intake history or any kind of formal assessment.” She first saw Mother as part of a joint session with Father “to work on their relationship,” and the second time to provide “crisis counseling” when Mother was released from the section 5150 hold. The psychiatrist described Mother’s “mental health as ‘distraught,’ ” and had referred her to the Prenatal to Three program because she feels Mother’s “needs are larger than she can address, and that the mother needs a mental health team.”

The Agency additionally spoke with a peer support counselor who Mother had been seeing twice a month for three years. The counselor, who “holds no counseling degrees,” reported she had “observed the mother with child and had no concerns.” The counselor stated Mother had only talked to her “about her relationship problems with [Father] for the last three years, and has never talked about her current pregnancy, except that she wants the new baby adopted.”

The Agency also contacted the maternal stepgrandfather who had adopted Mother’s oldest child, F.A., after Mother relinquished her parental rights. He recounted

Mother's troubled history with that child, including that Mother had once "told someone that she was selling her daughter, and the FBI got involved" and that the child had reported Mother hit her when she was asked about a black eye she had. He stated Mother had previously been diagnosed as bi-polar, and she "prostituted and worked in pornography." In December 2017, Santa Barbara Child Protective Services had contacted him when Mother was "in the psychiatric hospital" about possible placement for C.A. However, Mother was released from the hospital and C.A. was returned to her care before any placement could be established.

The Agency additionally spoke with Mother's sister who stated Mother and C.A. had stayed with her for a "few weeks around Easter." She described Mother as "depressed, 'but like any other normal person in her situation,' " and felt Mother was "a good mother."

The Agency concluded the additional information provided "additional cause for concern," and it did not "change the recommendation of the Agency."

Six days after filing the original petition, the Agency filed an amended petition alleging, "Mother continues to demonstrate a lack of understanding of the severity of her mental health condition(s) and has failed to seek consistent treatment."

At the contested detention hearing, the court heard from the Agency social worker. She stated Mother's mental health remained a concern "in regard to the safety of the child," not only because of Mother's "long-standing history of mental health concerns," but also because "even in the last year at Stanford alone, she has six to seven times" stated she wanted to hurt herself, with the last two times resulting in hospitalizations. The social worker stated that, to her knowledge, Mother was not receiving consistent therapy or on medication. The worker then went over Mother's self-harm statements listed in her addendum report. While the social worker stated there was "no evidence" Mother had "physically hurt [C.A.]," and Mother seemed "to have taken good physical care of the baby," her concerns were in regard to Mother's "mental-health history." She noted that because Mother "has a history also of being very impulsive," she did not "trust that she can take care of the baby."

Mother also testified. She claimed she was receiving mental health treatment and counseling, went to church and to “pregnancy centers,” and saw her peer counselor “to express [her] feelings and concerns of family matters.” She admitted she was not currently seeing her psychiatrist because the physician was on maternity leave, but she claimed she had seen her four times. The psychiatrist had prescribed Zoloft, which Mother said she had been taking off and on. She went off the drug because she “felt like it wasn’t working,” but admittedly did not talk to a doctor before stopping. She claimed she “went right back on [her] medication” after she was released from the hospital. On cross-examination, Mother admitted she had “been receiving no psychiatric treatment since October of 2017.”

Mother brought a certificate for a parenting class she had taken with her peer counselor and a letter indicating she had initiated contact with the psychologist mentioned in the addendum report. She also had a copy of an e-mail from a family friend stating Mother was a “ ‘very loving and caring mother; [C.A.] comes first in her life. He is always clean, smiling and playful.’ ” Finally, Mother brought photographs showing C.A.’s bedroom with a crib, books, diapers, and toys.

Father testified he felt Mother was “taking very good care of [C.A.]” right now but feared that when he got older and was “able to speak, there is a possibility that, you know, she may respond to him differently.” He feared C.A. might be exposed to their arguments, but said “he has been safe and well cared for.” Mother had expressed suicidal thoughts to him on “at least three or four” occasions. But he felt that “most of the time she was saying that she was suicidal or expressing . . . herself a certain way in order to get [his] attention, in order to get [him] to do what she wanted [him] to do,” and he did not think she would carry out any of her thoughts in front of C.A. Mother and the paternal grandmother did not get along, as Mother had previously listed his parents’ contact information on a Craigslist ad for prostitution, and had sent his mother a photograph of Father’s genitals after she could not reach Father one evening.

By this point in the hearing, the court was expressing concern about the evidence before it, stating Mother was “presenting as a very rational person. My dilemma is that

everything I am reading basically portrays you as being off the hook, somebody who has no control over her emotions, is basically histrionic, trying to manipulate [Father] to come back to you. [¶] So there is a real disconnect between what I am reading and the way you present, which is of grave concern to me.” The court requested “medical information about the mother” if the parties wanted the “detention to go forward,” because as the court saw it, the case sounded like “a couple of people who don’t get along with some in-laws, a bad practical joke, a drama queen saying things without acting upon those things. It is just a big blur.”

The matter was continued to allow the Agency to obtain medical information regarding Mother. Two days later, the hospital social worker testified she had met with Mother three times in person and once by phone, that Mother had admitted to having been a sex worker, and Mother displayed “a lack of judgment” and was “quick to anger.” The hospital social worker also confirmed Mother had made all of the self-harm statements in the Agency’s report.

Mother’s psychiatrist also testified. She confirmed she had seen Mother on only two prior occasions. Her preliminary diagnosis was depressive disorder, and she had prescribed medication. There had not been “good follow-up” by Mother, however, so it was unclear whether Mother had actually taken the medication. The psychiatrist did not have “any imminent safety concerns,” but recommended continued monitoring.

Citing Mother’s “erratic behavior in the presence of [C.A.],” including the “car seat thing,” the court continued C.A.’s detention and ordered Mother to obtain a mental health evaluation, “see a therapist,” and “have absolutely no contact whatsoever with [F]ather.” The court also ordered supervised visitation and again emphasized Mother was to stay away from Father.

In the Agency’s jurisdiction/disposition report, the social worker reported Mother completed four scheduled visits, she was always on time, prepared and “responsive” to C.A.’s needs. Mother’s mental health problems continued to remain a concern, and the Agency requested “additional time to receive the result of the mental health evaluations to provide an accurate understanding of the needs for the family.”

After the report was filed, but before the jurisdiction/disposition hearing, Mother gave birth to V.A. The Agency filed a juvenile dependency petition for V.A., alleging she was a child described by section 300, subdivisions (b)(1) (failure to protect) and (j) (abuse of a sibling).

The detention report for V.A. detailed three new incidents of Mother's "erratic behavior." In the first, Mother took V.A. to a mail center, placed the infant inside an open box, and had "a friend trick the father" into coming to the mail center "to pick up a package." Next, Mother met a gentleman in Palo Alto and went back to his hotel room with then two-week-old V.A. While there, Mother texted a friend "suicidal threats." The friend contacted the police, and the San Mateo County Sheriff's Department performed a welfare check on Mother and found her and V.A. " '[h]iding on the elevator landing on the third floor.' " Finally, after finishing a supervised visit with C.A., Mother, with V.A. "in the car quickly spe[d] from the parking lot of the supervised visit" and "followed the father and yelled outside of her window" to give her the stroller, and upon no response from Father, "yelled 'deadbeat' " and drove away.

The Agency further reported Mother was currently participating in "Partners for Safe and Healthy Children Prenatal to Three services" and dyad therapy sessions with C.A. and was in the process of completing a therapeutic parenting assessment. Mother's psychological evaluation revealed she had major depressive disorder, PTSD, and borderline personality disorder. Her psychologist stated that while Mother " 'has the best interest of her child in mind,' " " 'her volatile mental state and unstable mood' " means she " 'may not be at optimal functioning to perceive risks to her child and to protect adequately.' " She recommended Mother be referred to intensive case management, a peer parent program, and continued parenting interventions involving her parenting skills and protective capacity.

The Agency concluded that although Mother had "cooperated by participating in her [p]sychological [e]valuation and therapeutic services," "it [was] evident by her setting the father up to violate the restraining order by visiting with their daughter in a mail center, exposing [V.A.] to a stranger in a hotel, having further encounters with law

enforcement, and speeding away to follow the father after a visit that she is impulsive and her mental health symptoms are affecting her.”

Citing the “incident at the mail drop and the incident at the hotel as well as the psychological assessment that states that she is unstable at this time and subject to impulsive acts,” the court detained V.A.

At the combined hearing on the amended petition as to C.A. and the petition as to V.A., the court heard from Dr. Caroline Salvador-Moses, an expert in child and adult psychology, who performed the psychological evaluation on Mother before Mother gave birth to V.A. While Mother was “very pleasant and engaged,” she presented as “emotional,” “depressed, anxious, [and] very preoccupied with her current situation.” Mother had a number of symptoms of depression, “including depressed mood, crying spells, low self concept, as well as disrupted sleep, poor concentration, past history of intermittent suicidal thoughts, but really no serious ideation intent, means or plan.” Mother had “demonstrated impulsive behavior, poor judgment, and volatility,” and these factors left questions “as to whether she can appropriately protect her son.” Dr. Salvador-Moses recommended intensive individual therapy, dialectic behavior therapy, and a medication evaluation.

The court also heard from the Agency social worker. The social worker reported Mother initially denied contact with Father in connection with the mailbox incident, but later admitted it and stated, “she felt like the father wanted to see the child and that’s why she wanted to have the contact with him.” She noted Mother was “loving” and “appropriate” with the minors during visits.

Mother presented testimony by a marriage and family therapist trainee from the Prenatal to Three program, who described Mother as being “nurturing” and very attuned to V.A. She acknowledged, however, that Mother had not started treatment for her underlying diagnoses of PTSD and borderline personality disorder.

C.A.’s therapist also testified. She had been seeing the child for approximately two months and had not observed any signs C.A. was suffering emotional distress. She had observed C.A. with Mother on two occasions and stated Mother was “affectionate

and nurturing” toward C.A. She had no concerns about C.A. in Mother’s care during those times.

The court then heard from counsel. Mother’s counsel maintained this dependency proceeding came “down to four incidents,” the “incident with the car seat,” “the incident with the stroller where the mother was running through the parking lot,” “the incident of the mother driving fast after a visit,” and the “incident of the baby in the box wrapped by the blanket in the postal center,” all of which counsel argued did not give the court a sufficient basis for jurisdiction. Minors’ counsel expressed concern for the children, pointing to the fact Mother had driven two-day-old V.A. up from L.A. and placed her in a box, and “any reasonable person would say that the child could have been harmed in that kind of [] situation.” Even though Mother was “loving toward her children” and “deeply cares for them,” counsel considered the recent incidents as illustrative of Mother’s “erratic and volatile behavior.” Father’s counsel agreed, and urged the court to take jurisdiction. The Agency’s counsel did so as well.

The court sustained the dependency petitions as to count (b) only. The court ordered the minors returned to Mother, finding there was not clear and convincing evidence of “substantial risk at this juncture” to maintain the removal order. The court then ordered family maintenance services for Mother and Father and transferred the case to Los Angeles County, where Mother lived.

DISCUSSION

Mother contends the orders sustaining jurisdiction pursuant to section 300, subdivision (b)(1) are not supported by substantial evidence.

A juvenile court has jurisdiction over a child when a child services agency establishes by a preponderance of the evidence that allegations made pursuant to section 300 are true. (§ 355, subd. (a); *In re Johnathan B.* (2015) 235 Cal.App.4th 115, 118–119.)

Jurisdiction under section 300, subdivision (b)(1) applies when “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent . . . to adequately

supervise or protect the child” or “the inability of the parent . . . to provide regular care for the child due to the parent’s . . . mental illness, developmental disability, or substance abuse.” (§ 300, subd. (b)(1).)

We review a juvenile court’s jurisdictional findings for substantial evidence. (*In re R.T.* (2017) 3 Cal.5th 622, 633.) “ ‘On review, this court will view the juvenile court record in the light most favorable to that court’s order. . . . We may not reweigh or express an independent judgment on the evidence, but must decide only whether sufficient evidence supports the findings of the juvenile court. . . . Issues of fact and credibility are matters for the trial court alone; we may decide only “ ‘whether there is any substantial evidence, contradicted or uncontradicted, which will support the conclusion reached by the trier of fact.” ’ ” ’ ” (*In re Shelley J.* (1998) 68 Cal.App.4th 322, 329, superceded by statute on other grounds as stated in *In re Christopher C.* (2010) 182 Cal.App.4th 73, 82–83.) We construe all reasonable inferences in favor of the juvenile court’s finding. (*Francisco G. v. Superior Court* (2001) 91 Cal.App.4th 586, 600.) Moreover, “the parent has the burden of showing there is insufficient evidence to support the order.” (*In re N.M.* (2011) 197 Cal.App.4th 159, 168.)

Mother maintains her admittedly “significant mental issues,” which have caused her to “occasionally behave in an erratic and impulsive manner,” “did not present a current or future risk of serious or physical harm either to herself or her children.” She cites to a plethora of cases “addressing [and reversing] jurisdictional orders, based upon a parent’s mental health issues,” all of which are distinguishable.²

² *In re Matthew S.* (1996) 41 Cal.App.4th 1311, 1314, 1319 (insufficient evidence of substantial risk child would suffer serious physical harm where mother, who was suffering from the delusion her son’s genitals had been mutilated, took him to a urologist); *In re Janet T.* (2001) 93 Cal.App.4th 377, 388–390 (neither allegation of “ ‘mental and emotional problems’ ” and mother’s failure to ensure minors’ attendance at school, nor did the agency’s reports allege “necessary facts to support the conclusion the children were currently at a substantial risk of serious physical injury or illness”); *In re David M.* (2005) 134 Cal.App.4th 822, 829–832 (insufficient evidence of substantial risk where mother’s mental health and substance problems were “never tied to any actual harm” or a substantial risk of serious harm and agency failed to investigate and relied

Here, in contrast to the cases cited by Mother, there is substantial evidence to support the juvenile court’s findings that the children have “suffered, or there is a substantial risk” they “will suffer, serious physical harm or illness,” as a result of Mother’s “failure or inability . . . to adequately supervise or protect” the children or “inability . . . to provide regular care” for them due to Mother’s “mental illness, developmental disability, or substance abuse.” (§ 300, subd. (b)(1).)

There was, for example, evidence Mother exhibited a pattern of recent, erratic behavior that carried with it a substantial risk of physical harm to both Mother and the children, including speeding after Father in a parking lot with C.A. in a stroller while not looking for traffic, speeding after Father in a vehicle with V.A. while yelling at Father,

solely on past investigation involving another child), abrogated in part on another ground by *In re R.T.*, *supra*, 3 Cal.5th 622; *In re James R.* (2009) 176 Cal.App.4th 129, 136–137 (insufficient evidence where no showing mother had any suicidal ideation after birth of her children, father was able to protect and supervise minors, and no showing of past abuse or neglect), abrogated in part on another ground by *In re R.T.*, at p. 622; *In re Daisy H.* (2011) 192 Cal.App.4th 713, 717 (insufficient evidence where alleged domestic violence occurred years before filing of the petition, children stated they had no fear of father, and they appeared to be healthy and well-groomed); *In re A.G.* (2013) 220 Cal.App.4th 675, 683–684, 686 (insufficient evidence where custody order sought by the Father—the primary caregiver—in family court eliminated any risk minors would suffer harm because of the mother’s Schizoaffective Disorder); *In re Isabella F.* (2014) 226 Cal.App.4th 128, 140 (insufficient evidence minor faced substantial risk of harm based on the absentee father’s admission he was a “ ‘Bipolar mental health patient with Schizophrenia and paranoia’ ” and had been placed on a section 5150 hold two years earlier); *In re Jesus M.* (2015) 235 Cal.App.4th 104, 106 (finding that father’s harassing conduct placed the minors at risk of emotional, but not physical, harm, could not support jurisdiction under subdivision (b)(1)); *In re A.L.* (2017) 18 Cal.App.5th 1045–1046, 1049–1051 (insufficient evidence father had failed to protect minors (ages 11 and 15), or that the mother diagnosed with Schizophrenia created a substantial risk of harm after single occurrence of mother going off medication and in a manic state throwing shoe that happened to hit one of the children but caused no injury and father sought immediate help for mother); and *In re Joaquin C.* (2017) 15 Cal.App.5th 537, 563–564 (while the Agency provided “ample evidence” of the mother’s mental illness, it “did not prove that her condition rendered her unable to adequately supervise, protect, or provide regular care for her son” and her illness alone was not grounds to justify exercising dependency jurisdiction).

slamming C.A. into his car carrier and “jerking the baby’s head,” repeatedly expressing suicidal ideations and thoughts (her last threat one month before the jurisdiction hearing), and placing two-week-old V.A. inside a box and “trick[ing]” Father to go to the mail center in violation of a restraining order and contrary to the order of the juvenile court to stay away from Father.

While there is evidence Mother has also exhibited nurturing and loving behavior, and appears to have kept C.A. clean and nourished, and that she has resumed her medication and is participating in appropriate services, the court was not required to disregard her recent history of alarming behavior that put the children at risk or the fact she previously stopped taking her medication and only resumed doing so after the commencement of the dependency proceedings. In short, the juvenile court did not find jurisdiction solely because Mother faces challenging mental issues; rather there was evidence of recent troubling conduct that could have, but fortunately did not, result in physical injury to either child.

Mother asserts that “[i]f the children had truly been at risk with [M]other, the court would not have returned them to her custody.” However, parental custody status is a different issue than jurisdiction. “After the juvenile court finds jurisdiction pursuant to section 300, it must ‘adjudicate the child a dependent unless the severity of the case warrants nothing more than Agency’s supervision of family maintenance services. . . . [T]he court may, without adjudicating the child a dependent, order that services be provided to keep the family together under the informal supervision of the child welfare agency.’ (*In re N.M.* [*supra*,] 197 Cal.App.4th [at p.] 171. . . .) The court has broad discretion to determine what would best serve and protect the child’s interest and to fashion a dispositional order in accord with this discretion.” (*In re L.W.* (2019) 32 Cal.App.5th 840, 851; *id.* at p. 847–848 [finding by preponderance of evidence section 300, subdivision (b)(1) allegation was true, and finding by clear and convincing evidence that L.W. could remain in the mother’s care].)

In sum, the juvenile court's assumption of jurisdiction to ensure that Mother is provided with, and avails herself of, services to enable her to provide a safe home environment for her children is adequately supported by the record.

DISPOSITION

The juvenile court's jurisdictional and dispositional findings and orders are affirmed.

Banke, J.

We concur:

Humes, P. J.

Margulies, J.

A155374, *In re C.A.*